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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/865,792	05/25/2001	Jean-Pierre Giraud	5094.056	4413
32361	7590	11/14/2003	EXAMINER	
GREENBERG TRAURIG, LLP 885 3RD AVENUE NEW YORK, NY 10022			MEREK, JOSEPH C	
			ART UNIT	PAPER NUMBER
			3727	
DATE MAILED: 11/14/2003				18

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/865,792	
Examiner	Art Unit	
Joseph C. Merek	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on 14 August 2003.
- 2a)  This action is FINAL.                            2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) See Continuation Sheet is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 9,10,12-15,17,29,30,32-35,37,40,41,43-46,53,54,56-59 and 100-109 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on 25 May 2001 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All
  - b)  Some \*
  - c)  None of:
    1.  Certified copies of the priority documents have been received.
    2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
  - a)  The translation of the foreign language provisional application has been received.
- 14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____.
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.	6) <input type="checkbox"/> Other: _____.

Continuation of Disposition of Claims: Claims pending in the application are 9,10,12-15,17,29,30,32-35,37,40,41,43-46,53,54,56-59 and 100-109.

***Drawings***

The proposed drawing correction filed 8/14/03 has been disapproved sine they enter new matter in the disclosure. Therefore the previous drawing is maintained below.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "cap has a spout that projects from a side upwardly, the spout formed integrally with the cap and includes front and rear walls that converge to an outwardly protruding tip of the spout", "a valve located adjacent to or incorporated in to the spout wherein the valve substantially prevents a liquid from leaking out of the spout" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 9, 10, 12, 13-15, 17, 29, 30, 32-35, 37, 41, 43-46, 48, 53, 54, 56, 57-59, 61, and 100-109 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply

with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Regarding claims 9, 10, 12, 14, 15, and 17 it has not been adequately disclosed that the "a maximum diameter of the outer cup is less than the size of a typical child's hand, who is about 5 years old, so the child can sufficiently grasp the cup with one hand". This is a new matter rejection. The remaining claims are included since they stem from rejected claims.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 9, 10, 12, 13-15, 17, 29, 30, 32-35, 37, 41, 43-46, 48, 53, 54, 56, 57-59, 61, and 100-109 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 9, 10, 12, 13, 14, 15, and 17, it is not clear what physical structure of the container is required to meet the "cup insulation test method". Regarding claim 12, it is not clear what physical structure of the container is required to meet the drop test method. Regarding claims 9, 10, 12, 14, 15, and 17, it is not clear what size the cup has to be to satisfy the claimed limitation of "less than about a typical child's hand, who is about 5 years old, so the child can sufficiently grasp the cup with one hand". The specification does not set forth any diameter dimensions regarding the cup so as to determine the boundaries of the claim. The meets and the

bounds of the claim cannot be determined. The remaining claims are included since they stem from rejected claims.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 9, 10, 12, 29, 30, 32, 40, 41, 43, 53, 54, 56, 100, 101, 102, 105, 106, and 107 are rejected under 35 U.S.C. 102(b) as being anticipated by Noll (US 3,661,288).

Regarding claims 9, 10, and 12, see Figs. 1-4, the cap is 110 where 112 is the spout. The wall on one side of the spout is the front wall and the wall on the other side of the spout is the rear. The walls converge as seen in Fig. 2. The container is sized to fit the hand of a baby that is less than five years old. The container is capable of being grasped by a five year old with a single hand. The claims do not specify any shape for the spout and allow for the shape as presented in the reference. The term cup does not require any structure that is not in the reference. There exists a method of testing the cup such that the time will exceed 100 minutes. Moreover, there is no structure required by this limitation that is not in the reference. The cup is made from thermoplastic. The inner cup is receivable in the outer cup since as seen in the drawings it is inside the outer cup. Since the inner cup is inside the outer cup it satisfies the limitation. Regarding claim 12, as it is best understood, since the container of the

reference is plastic and similar construction as to that of the instant invention, the container of the reference will satisfy the drop test method. Regarding claims 29, 30, and 32, the valve is the spout or nipple and will substantially prevent a liquid from leaking out of the spout. It is inherent that the structure will have a small enough opening to substantially prevent a liquid from leaking out of the spout. Regarding claims 40, 41, and 43, see Fig. 1 where the volume is shown on the side of the container in ounces. Regarding claims 53, 54, and 56, see Col. 1, lines 20 and 21 where the plastic material of the cup can be polyethylene or polypropylene. Regarding claims 100-102, see Col. 1, lines 18 and 19, where the insulation material is Styrofoam. Regarding claim 105-107, see Col. 1, lines 15 and 16, where 106 and 108 are separated by an air space.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13, 14, 33, 34, 103, and 104 are rejected under 35 U.S.C. 103(a) as being unpatentable over Noll (US 3,661,288). Regarding claims 13 and 14, Noll discloses the claimed invention except for the thickness of the walls and the spacing between the inner and outer walls. It would have been obvious to one having ordinary skill in the art at the time the invention was made to vary the wall spacing or to vary the

thickness of the walls, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. The container is sized to fit the hand of a baby that is less than five years old. The container is capable of being grasped by a five year old with a single hand. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Regarding claims 233 and 34, the valve is the spout or nipple and will substantially prevent a liquid from leaking out of the spout. It is inherent that the structure will have a small enough opening to substantially prevent a liquid from leaking out of the spout. Regarding claims 103 and 104, see Col. 1, lines 18 and 19, where the insulation material is Styrofoam.

Claims 9, 10, 12, 13, 14, 15, 17, 29-30, 32-35, 37, 40, 41, 43-46, 48, and 105-109 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin (US 2,895,636) in view of Bachman et al (US 5,890,621). Regarding claims 9, 10, and 12, Martin teaches the claimed invention but does not teach the spout on the cap.

Bachman teaches a cap with a spout. It would have been obvious to modify the cap of Martin with the structure of Bachman et al to provide for a drinking cup for young children as taught by Bachman. It would have been obvious to one of ordinary skill in the art to make the container an appropriate diameter for a young child to grasp. Moreover, Martin teaches tumblers with without handles. The diameter would have to be of a size for a young child to grasp. The claims dos not specify any shape for the spout and allow for the shape as presented in the reference. The term cup does not require any structure that is not in the reference. The container will inherently meet the test method limitations. Moreover, there is no structure required by this limitation that is

not in the reference. The cup is made from thermoplastic. The inner cup is receivable in the outer cup since as seen in the drawings it is inside the outer cup. Since the inner cup is inside the outer cup it satisfies the limitation. Regarding claim 12, there is no structure required by the method that is not in the combination of references.

Regarding claims 13, 14, and 17, the modified structure of Martin discloses the claimed invention except for the thickness of the walls and the spacing between the inner and outer walls. It would have been obvious to one having ordinary skill in the art at the time the invention was made to vary the wall spacing or to vary the thickness of the walls, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Regarding claims 15 and 17, see Figs. 2, 5, and 6, where a curve region at a bottom outside edge of the outer cup has a thickness greater than the wall thickness of the outer cup and a notch in a curve region at a bottom edge of the outer cup. The wall is thicker at the curved corner and the notch is in the curve region. Regarding claims 29, 30, 32-35, and 37, the modified cup of Martin has a valve located adjacent to or incorporated into the spout that substantially prevents a liquid from leaking out of the spout. This is seen in Fig. 3 of Bachman et al. Regarding claims 40, 41, 43-46, and 48 the modified container of Martin discloses the claimed invention except does not teach that the volume capacity for the inner cup is between 6-9 ounces. It would have been an obvious matter of design choice to vary the size of the cup, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105

USPQ 237 (CCPA 1955). Moreover, the claimed volume capacity range is common or typical of drinking cups. It would have been obvious to make the cup of a common size. Regarding claims 105-109, see Col. 2, lines 32-35, where the space between the shells 18 and 23 has air therein. This is called an insulating air space.

Claims 53, 54, 56-59, 61, and 100-104 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin in view of Bachman et al as applied to claims 40, 41, 43-46, and 48 above, and further in view of Kennedy et al. Regarding claims 53, 54, 56-59, and 61, the modified cup of Martin teaches making the container of polystyrene but does not teach the polyethylene or polypropylene. Kennedy et al, as seen in Col. 2, teaches a similar container where polypropylene and polyethylene can be used in place of polystyrene. It would have been obvious to employ the plastics of Kennedy et al in the modified container of Martin to provide alternative plastic materials. Regarding claims, 100-104, the modified container of Martin teaches having an insulting air space but does not teach the claimed insulating materials. Kennedy et al, as seen in Figs. 2, 4, and 5 and Col. 2, lines 16-19, teaches that the space between the walls can be insulated. It would have been obvious to employ the insulation of Kennedy et al in the modified cup of Martin to provide for an alternative way to insulate the space. The insulation in the modified cup of Martin is foam.

### ***Response to Arguments***

Applicant's arguments filed 8/14/03 have been fully considered but they are not persuasive. Regarding the Noll reference, the container is made for an infant whose

hands are much smaller than a five-year-old child. The container is capable of being grasped by a five-year-old child.

Regarding the Martin and Bachman combination. The container as modified by Bachman is for a young child. One of ordinary skill in the art would size the container for a younger user.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

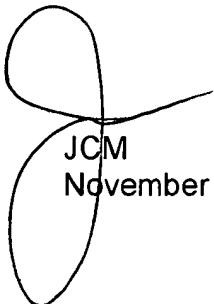
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Merek whose telephone number is (703) 305-0644. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone numbers for

Art Unit: 3727

the organization where this application or proceeding is assigned are (703) 305-3579 for regular communications and (703) 308-3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.



JCM

November 13, 2003



11/13/03

LEE YOUNG  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700